

Application No. 10/674,971
Amendment dated March 13, 2006
Reply to Office Action of September 13, 2005

REMARKS

Applicant amended claims 29, 39, and 41 to further define Applicant's claimed invention.

In the Final Office Action, the Examiner rejected claims 29-53 under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. Applicant amended independent claims 29 and 39 to recite that it is the opening "in the portion of each of the adjacent vertebral bodies" that is "at least in part curved." The amendment to claims 29 and 39 is supported at least by Figs. 8 and 14A, which show the curved portion of the opening in each vertebral body. Applicant submits that the Examiner's rejection of claims 29-53 under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement has been overcome.

The Examiner rejected claims 29-36, 50, and 51 under 35 U.S.C. § 102(b) as being clearly anticipated by U.S. Patent No. 5,192,327 to Brantigan ("Brantigan"); and rejected claims 39-47, 52, and 53 under 35 U.S.C. § 103(a) as being unpatentable over Brantigan. Brantigan teaches a plurality of stackable implants 21 having non-arcuate top and bottom faces 21e with ridges. (Brantigan, col. 4, lines 57-67; Figs. 2 and 5). As stated in Brantigan, these implants "are intended to bottom out on adjacent vertebral end faces, which preferably have been prepared by flattening with a burr drill." (Brantigan, col. 2, lines 59-61). Brantigan does not teach or suggest forming an opening having a portion in each of the adjacent vertebral bodies that is at least in part curved as recited in claims 29 and 39. Accordingly, Applicant submits that the rejection of claims 29-36, 50, and 51 under 35 U.S.C. § 102(b) as being anticipated by Brantigan, and the rejection of claims 39-47, 52, and 53 under 35 U.S.C. § 103(a) as being unpatentable over Brantigan have been overcome.

In response to the remarks from Applicant's last amendment, the Examiner contends that "the limitation that a *majority* of the trailing end be aligned with the anatomical curvature (Applicant's amended claim 29, last three lines) is absent from the original disclosure." (Office Action, paragraph bridging pages 3-4). Applicant respectfully traverses the Examiner's contention. In Fig. 6c, Applicant discloses an

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implant in which the entire trailing end is aligned with the anatomical curvature of an adjacent vertebral body. Applicant submits that one of ordinary skill in the art would appreciate that Fig. 6c also shows an implant in which a majority of the trailing end is aligned with the anatomical curvature of an adjacent vertebral body. Further, Applicant discloses in the specification that "as a substitute for contouring the entire trailing end, the trailing end may have a configuration that may be straight across and then chamfered" or "radiused to one side only." (Specification, paragraph bridging pages 20 and 21).

The Examiner further contends that "[i]f the Applicant's embodiments shown in Figure 10 (US 6,241,770 B1: column 8, lines 59-65; instant claim 41) and Figures 15A and 15B meet this newly added limitation, then so do the Bianchi et al. implants illustrated in Figures 8 and 9 of US 6,033,438." (Office Action, paragraph bridging pages 3-4). Applicant amended claim 41 to depend from independent claim 29. An example of an implant useable with the method of independent claim 29 is illustrated in Fig. 9, which shows an implant having a symmetrical trailing end that is configured to conform to the natural anatomical curvature of the anterior aspect of at least one of the adjacent vertebral bodies.

Applicant submits that independent claims 29 and 39 are patentable and that dependent claims 30-38 and 40-53 dependent from independent claim 29 or 39, or claims dependent therefrom, are patentable at least due to their dependency from an allowable independent claim.

In view of the foregoing remarks, it is respectfully submitted that the claims, as amended, are patentable. Therefore, it is requested that the Examiner reconsider the outstanding rejections in view of the preceding comments. Issuance of a timely Notice of Allowance of the claims is earnestly solicited.

To the extent any extension of time under 37 C.F.R. § 1.136 is required to obtain entry of this reply, such extension is hereby respectfully requested. If there are any fees due under 37 C.F.R. §§ 1.16 or 1.17 which are not enclosed herewith, including

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any fees required for an extension of time under 37 C.F.R. § 1.136, please charge such fees to our Deposit Account No. 50-3726.

Respectfully submitted,

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